

REMARKS

Formal Matters

Claims 3, 8, 9, 18 and 19 are pending after entry of the amendments set forth herein.

Claims 3 and 8-10 are rejected and claim 18 is allowed.

Claims 3, 8 and 9 are amended. The amendments to the claims were made solely in the interest of expediting prosecution, without any intention to surrender any subject matter, and are not to be construed as an acquiescence to any objection or rejection of any claim. The claims are re-worded, and, as such, support for the amendments may be found in the claims before they were amended, and, for example, page 3, lines 29-34, page 4, lines 6-14, and page 5, line 25- page 6, line 5 of the instant specification. Accordingly, no new matter is added.

Applicants respectfully request reconsideration of the application in view of the remarks made herein.

Obviousness-type Double Patenting

Claim 3 was rejected under the doctrine of obviousness-type double patenting as being unpatentable over claims 18, 19, 27 and 30-36 of co-pending U.S. application serial no. 10/104,611 ('611) in view of Draper et al. (US 5,248,670).

The Applicants categorically disagree with this rejection.

However, solely to expedite prosecution, the Applicants provide herewith a terminal disclaimer over US patent application 10/104,611.

The Applicants note that the filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection.¹ As such, while the Applicants firmly believe that this rejection fails to meet the requirements for Obviousness-Type Double Patenting set forth in MPEP § 804, a terminal disclaimer is filed to obviate the rejection.

Withdrawal of this rejection is respectfully requested.

¹ *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). The court indicated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

Rejections under U.S.C. § 112, second paragraph

Claims 3, 8 and 10 are rejected under U.S.C. § 112, second paragraph, as being indefinite.

Claim 3 is rejected for reciting the phrase “said viral nucleic acid” and claims 8-10 are rejected for reciting the phrase “said nucleic acid fragment”.

Claims 3, 8 and 9 are amended to remove these phrase.

The Applicants respectfully submit that the meaning of claims 3, 8 and 9 is clear, and, accordingly, this rejection may be withdrawn.

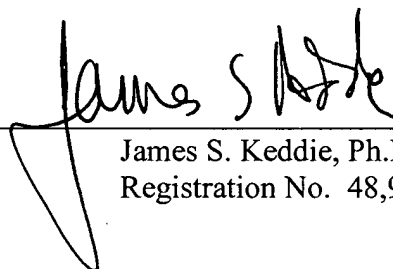
Conclusion

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number RIGL-009CON.

Respectfully submitted,
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